



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. James Showen
Senior Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR94-346

Dear Mr. Showen:

The City of Tyler (the "city") received a request to release copies of a proposal to administer the city's medical insurance plan. The proposal at issue was submitted by Blue Cross and Blue Shield of Texas, Inc. ("Blue Cross"), the successful bidder. You have asked this office to determine if the requested information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. You contend that the proposal is confidential under sections 552.104 and 552.110. The city's request was assigned ID# 23339.

As provided by section 552.305 of the Open Records Act, this office provided Blue Cross the opportunity to submit reasons as to why the information should be withheld. In a letter to this office, Blue Cross contends that the information is excepted under sections 552.110 and 552.104 for the following reasons:

First, the proposal provides that all materials therein are proprietary and confidential. Second, the proposal reveals our methods of conducting business and discloses the methodology [Blue Cross] uses in arriving at our negotiated diagnosis related grouping reimbursement rates, and the actual rates which will be billed and reimbursed to the City of Tyler. Release of this rate and pricing information would provide an advantage to competitors in that this information could be used by competitors in subsequent bidding against [Blue Cross] and result in a disadvantage to the City of Tyler when attempting to obtain the most favorable possible reimbursement rates from third-party payors.

The information submitted to this office for review includes information about the company; insurance billing rates and deductible amounts; sample medical enrollment reports; and a list of several clients for which Blue Cross provides similar services.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in a commercial context by keeping some competitors or bidders from gaining unfair advantage over other competitors or bidders. Open Records Decision No. 541 (1990) at 4. However, generally neither the contract nor information submitted with the bid is excepted under section 552.104 once the bidding process is over and a contract awarded. *Id.* at 5. Since the contract has already been awarded, and there is no indication that the proposal relates to another bidding situation or commercial transaction to which the city is a party, the proposal may not be withheld under section 552.104.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958); *see* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

The Restatement provides six factors in determining if information constitutes a trade secret. Those factors are:

- (1) the extent to which the information is known outside of the company;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939).

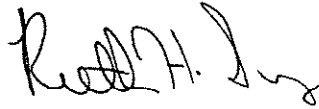
This office must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. However, neither the city nor Blue Cross has provided enough information to establish a *prima facie* case that the proposal is a trade secret. Blue Cross has supplied no facts to show how these factors apply to the proposal. Open Records Decision No. 402 (1983) at 2. Since Blue Cross has provided no basis on which this office may conclude that the proposal is a trade secret, the information is not excepted under the trade secret branch of section 552.110.¹

Some of the information at issue concerns commercial or financial information such as billing rates and insurance coverage costs. In Open Records Decision No. 592, this office determined that commercial or financial information is excepted under section 552.110 only if it is privileged or confidential under the common law or statutory law of Texas. This information is not protected by statute. There is no protected common-law privacy interest in financial information about a business. Open Records Decision No. 192 (1978) at 4 (right of privacy protects the feelings of human beings, not property, business, or other monetary interests); *see* Open Records Decision No. 373 (1983) at 3 (privacy interest in financial information relating to an individual.) The proposal is therefore not excepted under the commercial or financial information branch of 552.110.

¹Included in the information at issue is a list of several customers. Customer lists are the type of information that may be a trade secret. In order to make a *prima facie* case that the list is a trade secret, Blue Cross would have had to explain the steps the company has taken to protect the list and the value of this list to the company and its competitors. Open Records Decision No. 552 (1990) at 3.

The information at issue is not excepted from disclosure under either section 552.104 or 552.110 of the Open Records Act and must be released. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MRC/rho

Ref.: ID# 23339

Enclosures: Submitted documents

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